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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/578,437	05/25/2000	Jianhua Fan	12515.4USD1	6437

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/578,437

Applicant(s)

FAN, JIANHUA

Examiner

Jeffrey L. Gellner

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,23-25,27-29,32,40 and 44-46 is/are pending in the application.
- 4a) Of the above claim(s) 24,29,32,40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,23,25,27,28 and 44-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

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TECHNOLOGY CENTER 3600

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election

Applicant's election of species I in Paper No. 14 (entered 9 August 2001) is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the election of species requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Therefore, the election of species is made final.

Claims 24, 29, and 32 are drawn to nonelected species III and, therefore, are withdrawn.

Claim 40 is drawn to nonelected species III and, therefore, is withdrawn.

Claim Objections

Claims 25, and 44 are objected to because of the following informalities:

In Claim 44, line 2, after "conduit" should be inserted --is--.

In Claim 25, line 2, "sharp" should be --shape--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claims 1, 23, 25, 27, 28, and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In Claim 1 there is an inconsistency that renders the scope of the claim indefinite. Language in the preamble "tray for a plant pot" implies the claim is drawn to the subcombination of a tray. Language in lines 7-8 of "inserted into a bottom hole of the plant pot" implies the claim is drawn to the combination of a tray and a pot. Applicant must clarify the language of the claim so that it is drawn to either the subcombination - tray - or to the combination - a tray and pot. **Note:** Examiner considers Claim 1 to be drawn to the combination of a tray and pot.

In Claim 1, lines 6-10, the ending "for supporting a plant pot." of line 6 coupled with text of lines 7-10 beginning "one end of the" renders the claim indefinite because claims are to be one sentence. There should be no text after the period mark.

In Claim 1, lines 9 and 10, the clause "between side walls of pot and plate having a clearance/distance, so that air flow/ventilate under the plant pot thoroughly" is unclear as to what is between the pot and plate.

In Claim 25 there is an inconsistency that renders the scope of the claim indefinite. Language in the preamble "tray for a plant pot" implies the claim is drawn to the subcombination of a tray. Language in line 3 of "part of the side walls support a plant pot" implies the claim is drawn to the combination of a tray and a pot. Applicant must clarify the language of the claim so that it is drawn to either the subcombination - tray - or to the combination - a tray and pot. **Note:** Examiner considers Claim 25 to be drawn to the combination of a tray and pot.

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In Claim 25, lines 2 and 3, the language “sharp of the plate is different with a plant pot” is unclear. Perhaps it should be --shape of the plant is different than the shape of the plant pot--.

In Claim 27 there is an inconsistency that renders the scope of the claim indefinite. Language in the preamble “tray for a plant pot” implies the claim is drawn to the subcombination of a tray. Language in line 6 of “and the low section supporting a plant pot” implies the claim is drawn to the combination of a tray and a pot. Applicant must clarify the language of the claim so that it is drawn to either the subcombination - tray - or to the combination - a tray and pot. **Note:** Examiner considers Claim 27 to be drawn to the combination of a tray and pot.

In Claim 28, line 1, the element “notch(s)” is indefinite because it is unclear whether Applicant is claiming a notch, more than one notch, or at least one notch. Examiner suggests that Applicant use the phrase --at least one notch--.

In Claim 46, line 1, the language of “a rod, at least one rod” is indefinite because it is unclear as to whether Applicant is claiming one rod or multiple rods.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Brankovic (US 4,083,146).

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As to Claim 1, Brankovic discloses a tray with a pot (Figs. 1 and 2) comprising a plate (1 of Fig. 1) with side walls (3 of Fig. 1) and a bottom wall (7 of Fig. 1), the plate holding a liquid; a wick (12 of Fig. 1) accompanying the plate which provides fluid (11 of Fig. 1), the wick reaching from inside the pot to the tray bottom (see Fig. 1); and a support (9 of Fig. 1) coupled to the plate, the pot sitting directly on the support with a distance between the pot and the side walls to allow ventilation.

Claims 25, 28, and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Gardner et al. (EP 0619940 A2).

As to Claim 25, Gardner et al. disclose a self watering apparatus (Fig. 1) comprising a plate (1 of Fig. 1) with side walls and a bottom wall and a shape different from a plant pot (4 of Fig. 1), part of the side walls (2 of Fig. 1) supporting the pot with a clearance between the walls of the plate and the walls of the pot; and a wick (9 of Fig. 1) accompanying the plate which provides a fluid conduit for sucking fluid.

As to Claim 28, Gardner et al. further disclose a notch (2 of Fig. 1) for holding a pot.

As to Claim 46, Gardner et al. further disclose a notch (3 of Fig. 1) for holding a pot.

Claims 27, 44, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Nichtnennung beantragt "Nicht" (DT 2610613 A1).

As to Claim 27, Nicht discloses a self watering tray (Fig. 1) for a plant pot comprising a plate (1 of Fig. 1 with side walls, bottom, and fluid (4); a leg (10 of Fig. 1) coupled to the plate with two section, a shoulder (22 of Fig. 1) between the up and low section; a smaller up section

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(region around 19 of Fig. 1) inserted in a pot (7 of Fig. 1) and a lower section (region around 30 and 40 of Fig. 1), the lower section supporting the pot (40 of Fig. 1).

As to Claim 44, Nicht further discloses a wicking material (30 of Fig. 1).

As to Claim 45, Nicht further discloses some wicking material in the pot (Fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brankovic (US 4,083,146) in view of Muller & C^{ie} (France no. 579.120).

As to Claim 23, the limitations of Claim 1 are disclosed as described above. Not disclosed is the wick disposed in a tube. Muller & C^{ie} however disclose a tray pot system with the wick disposed in a tube (Fig. 1). It would have obvious to one of ordinary skill in the art at the time of the invention to modify the tray of Brankovic by disposing the wick in a tube so as to protect the wick from tearing.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chung discloses in the art a pot with a support.

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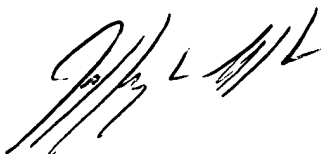
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose telephone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The fax phone numbers for the Technology Center where this application or proceeding is assigned are 703.305.7687, 703.305.3597, and 703.306.4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



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